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No. 345

In the Supreme Court of the United States

OCTOBER TERM, 1929

UNITED STATES SHIPPING BOARD MERCHANT FLEET CORPORATION, SUED IN THE NAME OF THE UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, PETITIONER

v.

P. LEROY HARWOOD, AS TRUSTEE IN BANKRUPTCY OF GROTON IRON WORKS

AND

ISAAC SIEGEL AND JOHN M. P. THATCHER, AS ANCILLARY RECEIVERS OF UNITED STATES STEAMSHIP CO., INTERVENORS

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT, AND BRIEF IN SUPPORT THEREOF

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In the Supreme Court of the United States

OCTOBER TERM, 1929

No. ———

UNITED STATES SHIPPING BOARD MERCHANT FLEET Corporation, sued in the name of the United States Shipping Board Emergency Fleet Corporation, petitioner

v.

P. LEROY HARWOOD, AS TRUSTEE IN BANKRUPTCY of Groton Iron Works

and

ISAAC SIEGEL AND JOHN M. P. THATCHER, AS ANCILLARY Receivers of United States Steamship Company, intervenors

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT, AND BRIEF IN SUPPORT THEREOF

PETITION

The Solicitor General, on behalf of the United States Shipping Board Merchant Fleet Corporation, (formerly United States Shipping Board

Emergency Fleet Corporation), prays that a writ of certiorari issue to review the decree of the United States Circuit Court of Appeals for the Second Circuit entered in the above case May 13, 1929, (on which rehearing was denied May 28, 1929), reversing a decree of the United States District Court for the District of Connecticut.

STATEMENT

During the war emergency the Fleet Corporation, on June 15, 1917, entered into a contract with Groton Iron Works, a Maine corporation, by which the latter agreed to construct twelve wooden hulls. (R. 58.) This contract was modified by a supplemental contract, dated September 30, 1918, which provided that only eight of said twelve wooden hulls should be constructed. (R. 69.) On August 11, 1917, the Fleet Corporation executed another contract with Groton for six steel ships, (R. 76), and on April 20, 1918, another contract for six more steel ships. (R. 93.) After the armistice construction of three of the steel ships was suspended by order of the Fleet Corporation. (R. 33, 141.) These transactions of the Fleet Corporation arose out of the exercise of powers conferred upon it in several different ways. (See pp. 14–18, *infra*.)

In March, 1919, Groton had become involved in financial difficulties and receivers were appointed by the State court, who continued to operate the plants and carry on construction work on the contracts above mentioned. (R. 170–171.) While the

receivers were in charge, those interested in Groton, including Charles W. Morse and his sons, endeavored to have the receivership lifted; and several conferences were held between the representatives of the parties, in the course of which the Morses represented that if the Fleet Corporation would extend certain further financial aid Groton would be able to take care of the further financing necessary to complete the unfinished contracts. (R. 170, 172.) From time to time the Fleet Corporation had loaned large sums of money to Groton, secured by mortgages on the shipbuilder's plants, which loans aggregated $1,800,000, plus interest, in March, 1920. (R. 121.) These negotiations culminated in the execution, on March 26, 1920, of a new contract between "Groton Iron Works, party of the first part," and the Fleet Corporation, described as "representing and acting in respect to all matters hereinafter contained for and on behalf of the United States of America, (hereinafter referred to as the Owner), party of the second part." (R. 118.) This contract shows on its face that the Government, acting through the Fleet Corporation, was attempting to settle all matters then in controversy arising out of the several contracts and their partial suspension. The contract recited that its principal purpose was to lift the receivership, restore the plant to Groton, and permit it to continue ship construction and operation of the plant. (R. 120.) By the terms of this contract the mortgage was extended and the price of ships was increased.

(R. 121–123.) In compliance with its terms, the Fleet Corporation thereafter advanced $250,000 to the receivers to pay Groton's creditors and met pay-roll requirements of $100,000 more, as well as various bills for materials. (R. 172–173, 552.) The work of building the ships was continued. (R. 552.)

A short time afterwards Groton became unable to proceed with the construction, the receivership was continued, and eventually Groton was adjudged a bankrupt. (R. 24.)

The present litigation was instituted against the Fleet Corporation by Groton in February, 1921, (before the bankruptcy adjudication), as an action at law in the Superior Court of Connecticut, to recover $13,000,000 damages because of the suspension of construction of some of the ships and because of alleged breaches of the three shipbuilding contracts. (R. 1.) The case was removed to the United States District Court, where, upon stipulation, it was transferred to the equity side, and respondent Harwood, as Trustee in Bankruptcy, was substituted as plaintiff. (R. 22–24.) A new bill of complaint was filed by Harwood, setting forth practically the same claims which were in the original complaint at law, but praying for an accounting, for a decree setting aside the settlement contract of March 26, 1920, on the ground of duress and fraud, and for a money judgment. (R. 24, 57, 58.) Respondents Siegel and Thatcher intervened as Ancillary Receivers of United States Steamship Company, a corporation

which owned all the capital stock of Groton. (R. 157.)

Petitioner's answer denied all the allegations of the bill of complaint as to breaches of the contracts, duress, and fraud, and alleged that Groton had been overpaid to the extent of at least $5,000,000. (R. 135.) As a first separate defense, petitioner alleged that by virtue of the contract of March 26, 1920, Groton had compromised and settled all matters in controversy which had arisen prior thereto. (R. 145.) As a fourth separate defense, petitioner alleged that with respect to each and all of the transactions set forth in the bill, petitioner was acting solely as an agency of the United States under the powers delegated to petitioner by the President, pursuant to the Act of June 15, 1917, (c. 29, 40 Stat. 182); that petitioner had not assumed and was under no personal liability to plaintiff because of such transactions; and that plaintiff's sole remedy, if any, was by suit against the United States in the manner provided by law. (R. 148.)

On motion the court severed the special issues, (R. 155), and referred petitioner's first and fourth separate defenses to a Special Master to take testimony and report thereon, because a determination adverse to plaintiff on either issue might obviate taking any further testimony. (R. 152, 153, 155.)

The Special Master's report contained special findings of fact and conclusions of law. It sustained petitioner on every issue raised by the first defense and held that the rights of the parties were

fixed by the contract of March 26, 1920. (R. 161, 178.) As to the fourth defense, the Master concluded that petitioner had failed to prove by a preponderance of the evidence that petitioner was not the party with whom Groton contracted; that it had not contracted with the United States, and therefore found that issue in favor of plaintiff. (R. 178, 183–189). This conclusion was in large part dependent upon the Master's interpretation of the *Sloan* and *Astoria cases*, 258 U. S. 549, with which the District Court and other courts have since differed.

After hearing on exceptions of both parties to this report, the District Court handed down an opinion which sustained the Master's report as to the first defense, and sustained petitioner's exceptions to the Master's report on the fourth defense, on the ground that the evidence had established that—

> the Fleet Corporation was acting as agent of the United States in behalf of the United States, under the statutory powers granted to the President and by him delegated to the Fleet Corporation, to procure the construction of ships for the United States. The Fleet Corporation is, therefore, not liable.

Accordingly, a decree was entered dismissing the bill. (R. 504–513, 514.)

On appeal, the Circuit Court of Appeals sustained the first defense, but it reversed the District Court as to the fourth defense, and held that petitioner was personally bound by the March 26, 1920,

contract, and that the District Court erred in sustaining the defense asserted to the accounting. (R. 551.) This conclusion was based largely upon the authority of the *Sloan* and *Astoria cases*. (R. 549–551.)

A petition for rehearing was denied. (R. 555.)

Mandate having issued, the District Court has entered a decree reversing its former decree, and counsel for plaintiff have announced their intention to apply for an order to direct the Special Master to proceed with an accounting. (The facts stated in this paragraph do not appear in the record.)

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

I. In reversing the decree of the District Court as to the fourth defense.

II. In holding that the Fleet Corporation was personally bound by the contract of March 26, 1920, and subject to an accounting under that contract.

REASONS FOR GRANTING THE WRIT

This case is of general importance. The principle involved is one which is constantly arising; it is involved in several important cases which are now in the lower Federal courts, and the recent decisions of these courts on the point are in sharp conflict.

Since the decisions of this Court in the *Sloan* and *Astoria cases*, (258 U. S. 549), in 1922, there has been a widespread difference of opinion in the minds of the bench and bar as to the effect of those decisions. Some lawyers and some courts have inter-

preted them to mean that while the Fleet Corporation is suable, just as any other corporation or natural person is *suable* in the District Courts, it is not *liable* ex contractu in its private corporate capacity when it appears that the contract was made by it on behalf of the United States under the power and authority delegated to it by the President's Executive Orders, pursuant to the Emergency Shipping Fund provisions of the Act of June 15, 1917, and Acts amendatory thereof. District Judge Bean, (of the District of Oregon), in a carefully worded opinion so held in *Astoria Marine Iron Works* v. *Fleet Corportion,* 295 Fed. 415, a case where the plaintiff was the same and the wording of the contract was similar to that involved in the *Astoria* case which was before this Court. In *Fleet Corporation* v. *Galveston Drydock & Construction Company,* 13 F., (2d), 607, the Circuit Court of Appeals for the Fifth Circuit reversed a judgment against the Fleet Corporation for work done and material furnished on contracts made for ship repairs, when it appeared that the Fleet Corporation was acting as agent of the Shipping Board pursuant to the authority to repair and operate the Government's vessels, conferred on that Board by Section 12 of the Merchant Marine Act, 1920. This Court denied certiorari in this case, 273 U. S. 725. On the other hand, the Circuit Court of Appeals for the Second Circuit in this case and in other cases, (*Dietrich* v. *Fleet Corporation,* 9 F., (2d), 733; *Providence Eng. Corp.* v. *Downey,* 294 Fed. 641), has held that—

> although in making such contracts the Fleet Corporation was exercising powers derived from the Executive Orders issued pursuant to the urgent deficiency act for the purpose of carrying out its provisions, it is a principal and responsible as such. (R. 549.)

In the last-named case certiorari was denied, *sub. nom. Fleet Corporation* v. *Chase National Bank*, 264 U. S. 586.

Since the *Sloan* and *Astoria cases* were decided seven years ago, the exact question raised by the record here has not been presented to this Court "on answer and evidence," and it was suggested by the Chief Justice in the dissenting opinion in those cases that possibly the question raised in this present petition might properly arise only on answer and evidence. (258 U. S. 549, 572.) There have, however, been cases in which the liability of the Fleet Corporation has been considered. (See *U. S. ex rel. Skinner & Eddy Corporation* v. *McCarl*, 275 U. S. 1, and *Fleet Corporation* v. *Western Union Telegraph Co.*, 275 U. S. 415, 422.) In the latter this Court said that the Fleet Corporation "has never done any business, or conducted any operation, except on behalf of the United States."

We submit that the decision of the Circuit Court of Appeals erred in failing to apply the rule that a public agent, contracting within the scope of its authority on behalf of a disclosed principal, is not personally liable, (see *Hodgson* v. *Dexter*, 1 Cranch, 345; *Jones* v. *LeTombe*, 3 Dallas, 384; *Belknap* v. *Schild*, 161 U. S. 10, 17), and that it is contrary to

the applicable decisions of this Court and is untenable, unless this Court, by its opinion in the *Sloan* and *Astoria cases,* intended to overrule or modify the principles laid down in the cases cited immediately above.

In any event, the decision of the court below, if acquiesced in, would leave the subject in confusion.

Certiorari has been granted in the following cases now before this Court, which present the somewhat similar questions of liability of the Fleet Corporation for personal injuries and cargo losses occurring in the course of its operation of vessels since the passage of the Merchant Marine Act of June 5, 1920: *Johnson* v. *Fleet Corporation,* No. 5; *Fleet Corporation* v. *Lustgarten,* No. 32; *Federal Sugar Refining Co.* v. *United States,* No. 56.

Although it does not appear in the record, it is a fact that the United States, as plaintiff, is now seeking in the same United States District Court in which the instant case was brought to foreclose a mortgage on the plant of Groton executed by the latter to the Fleet Corporation prior to the settlement agreement of March 26, 1920, and to recover judgment on the notes secured thereby. These notes are for the aggregate sums of about $2,000,000, which were advanced by the Fleet Corporation as part of the transactions connected with the contracts mentioned above. This mortgage and these notes are now unquestionably the property of the United States. It is certain that the Government will be unable to satisfy the large deficiency judg-

ment against Groton which it will undoubtedly recover; and, unless the decision which the instant petition seeks to review is reversed, the Government will be unable to use this deficiency judgment in set-off or recoupment against the claims of Groton asserted in the instant litigation. It is also obvious that unless the decision of the Circuit Court of Appeals is now reviewed and reversed, there will be long, complicated, and expensive accounting proceedings before the Master.

There is also a case now pending in the United States District Court for the Eastern District of Pennsylvania wherein the Bethlehem Shipbuilding Company is suing the Fleet Corporation on similar contracts. This case has been consolidated with another action brought by the United States as plaintiff against the Bethlehem Shipbuilding Company on the same transactions. If this Court should review the case at bar, its opinion would tend to clarify and simplify the conflicting issues in the pending *Bethlehem cases,* which involve sums aggregating many millions of dollars.

Wherefore, it is respectfully submitted that the petition should be granted.

CHARLES E. HUGHES, JR.,
Solicitor General.

AUGUST, 1929.

BRIEF IN SUPPORT OF THE PETITION

OPINIONS BELOW

The opinion of the District Court, (R. 504–513), is reported in 26 F., (2d), 116. The opinion of the Circuit Court of Appeals, (R. 548–553), is reported in 32 F., (2d), 680.

JURISDICTION

The decree of the Circuit Court of Appeals for the Second Circuit was entered on May 13, 1929. (R. 553.) Petitioner filed a petition for rehearing which was denied by said Court on May 28, 1929. (R. 555.) The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

A written agreement executed on March 26, 1920, between Groton Iron Works and the Fleet Corporation, "a corporation organized under the laws of the District of Columbia, representing and acting in respect to all matters hereinafter contained for and on behalf of the United States of America," adjusted all rights of the parties under several contracts previously entered into between June 15, 1917, and September 30, 1918, or provided a method for their adjustment. The earlier contracts provided for the construction of certain hulls and suspension of some of the construction. The contract of March 26, 1920, provided for the lifting of the receivership of Groton, for certain advances to Groton, and for certain cancellations, payments,

and accountings. The action of the Fleet Corporation in executing all of the contracts was authorized or ratified by various Executive Orders of the President pursuant to the Emergency Shipping Fund provisions of the Act of June 15, 1917, and other war emergency Acts amendatory thereof.

The sole question is, whether on these facts and the other facts appearing upon bill, answer, and proof the Fleet Corporation is personally liable for an accounting under the contract of March 26, 1920, in an equity suit in the District Court for the District of Connecticut.

STATUTES AND EXECUTIVE ORDERS INVOLVED

Shipping Act, 1916, c. 451, 39 St. 728. The pertinent sections are Sections 5, 7, 11, and 13.

Urgent Deficiency Act, approved June 15, 1917, c. 29, 40 Stat. 182. The pertinent sections are the Emergency Shipping Fund provisions; also Section 3 of the Act. The *Executive Orders* issued by the President on July 11, 1917, and December 3, 1918, are also pertinent.

Merchant Marine Act, 1920, approved June 5, 1920, c. 250, 41 Stat. 988. The pertinent sections are Sections 2, 4, and 12.

The portions of the Acts and Executive Orders above mentioned are set forth in the Appendix to this brief, pp. 34 et seq., *infra.*

DISCUSSION OF STATUTES AND EXECUTIVE ORDERS INVOLVED

In addition to the facts set forth in the foregoing petition, (pp. 2–7, *supra*), there is a background

of events necessary to a clear understanding of this controversy.

Although the Shipping Act of 1916, which created the Shipping Board as a Federal commission and authorized the Board to form one or more corporations with a capital stock of Fifty Million Dollars to carry out the public purposes of that Act, was enacted by Congress "in contemplation of the possibility of war," (*Skinner & Eddy Corporation* v. *McCarl*, 275 U. S. 1, 5), it is reasonable to assume that when the Act was passed Congress could not have anticipated the extraordinary functions and responsibilities that the national emergency subsequently imposed upon the Shipping Board and its creature, the Fleet Corporation. As soon as war was declared, on April 6, 1917, the demand for ships to transport our troops, supplies, and munitions overseas and to maintain our water-borne foreign commerce was of the greatest urgency. The Shipping Board, newly organized in January, 1917, had no funds to use for acquisition of ships, except the Fifty Million Dollars to be derived from the sale of Panama Canal bonds then held by the Treasury Department. But this sum was available only as capital stock for a corporation or corporations to be formed. (Secs. 11, 13, Shipping Act, 1916.) Accordingly, the Fleet Corporation was organized on April 16, 1917, ten days after war was declared, and immediately began executing contracts for the construction of ships.

It was then recognized, however, that further large appropriations must be made to meet the necessities of the emergency. An Urgent Deficiency Bill (H. R. 3971) was pending in the Senate and at the President's suggestion a Senate amendment was added which, after some changes, appears in the Act under the title "Emergency Shipping Fund." The measure was finally passed and approved on June 15, 1917. It gave broad powers to the President to acquire such ships, material, shipbuilding and transportation facilities as in his judgment the necessities of the Government might require; to modify, suspend, cancel, or requisition any existing or future contract for the building, production, or purchase of ships; and to expend $750,000,000 for such purposes. He was further authorized to exercise the power and authority so vested in him and expend the money therein and thereafter appropriated through such agency or agencies as he might determine from time to time. (40 Stat. 182, 183, pp. 38–40, *infra*.)

On July 11, 1917, the President, by Executive Order, delegated to the Fleet Corporation all the power and authority so vested in him to acquire ships by construction, purchase, requisition of ships in process of construction, or requisition of contracts therefor, and delegated to the Shipping Board all the power and authority so vested in him to take title or possession by purchase or requisition of constructed vessels, or parts thereof, or charters

therein, and to operate, manage, and dispose of such vessels and all other vessels acquired by the United States. (See pp. 40–41, *infra.*)

But in the meantime, while the Bill was being delayed and debated in Congress, the Executive Branch of the Government felt forced by the emergency to go ahead with the execution of contracts for war purposes. On May 28, 1917, the Bill being before the House, Chairman Fitzgerald, of the Appropriations Committee, said, (Vol. 55, Part 3, p. 3014, Cong. Rec.):

> * * * I do not believe we would be justified in holding up this appropriation bill carrying more than $3,000,000,000 in view of the fact that expenditures are being made without authority and that the passing of this bill is very much needed.

Representative Gillett (now Senator) said, (p. 3020):

> We ought to act at once. Commitments and contracts and expenses are being made now without legal authority, but with faith that Congress will excuse and ratify them because of the great emergency, and we ought as speedily as possible end that condition by appropriating the necessary money. And so representing the minority of the committee, I urge that this bill be at once sent to conference.

It thus appears that Congress knew that in the emergency the departments and agencies of the Government were rushing war preparations and

committing the Government in advance of receiving authority so to do. Recognizing this situation, the following provision was added to the Act of June 15, 1917:

> The appropriations contained herein shall be available for the payment of obligations on account of the existing emergency incurred prior to the passage of this Act and which are properly chargeable to such appropriations. (Sec. 3, c. 29, 40 Stat. 217, quoted on p. 40, *infra.*)

This retroactive provision was in effect ratification of the contract with Groton which was executed on June 15, 1917, (the date the Act was approved but prior to the delegation of authority by the President), because in further discussion of the contracts for ships then being made, Chairman Fitzgerald said (Vol. 55, Part 3, p. 3018, Cong. Rec.):

> All I have to say about the contracts is that the best equipped man in the United States, General Goethals, makes them in behalf of the United States Government.

General Goethals was then General Manager of the Fleet Corporation.

The opinion of this Court in *Skinner & Eddy Corp.* v. *McCarl,* 275 U. S. 1, *supra,* contains an exhaustive review of the legislation and executive orders under which the Fleet Corporation was created and has functioned, and in the course of the opinion Mr. Justice Brandeis pointed out (p. 9)

that the transactions of the Fleet Corporation arose out of powers conferred upon it in several different ways, for besides powers conferred by the general corporation laws of the District of Columbia the Fleet Corporation was vested, by delegation from the President, with powers conferred upon him by the Act of June 15, 1917, (40 Stat. 182), and later amendatory Acts, passed during the war emergency.

Thus, the Fleet Corporation differs from the numerous other Government-owned private corporations employed by the United States as instrumentalities in various fields, because it not only had power to function as an agency of the Shipping Board within the scope of its charter powers as they were limited by the restrictive provisions of Sections 5, 7, and 11 of the Shipping Act, 1916, (39 Stat. 728, pp. 34–37, *infra*), and when so functioning to expend the Fifty Million Dollars provided for its capital stock, but also, by the Executive Order of July 11, 1917, and a later one on December 3, 1918, it was clothed with some of the enormous powers conferred on the President by the emergency legislation above mentioned, and was thereby intrusted with the expenditure of approximately three billion dollars, appropriated by Congress from time to time for expenditure by the President, to further the production of ships necessary for the national defense. (See pp. 40–43, *infra*.)

It is argued that support can be found for holding the Fleet Corporation liable in its corporate capacity as principal on the contract of March 26, 1920, in the provisions of the Act of June 15, 1917, quoted on pp. 38–40, *infra*. It has been argued that by the proviso as to the expenditure of money Congress intended that the money turned over to the Fleet Corporation should become corporate money, and hence that Congress intended the Fleet Corporation to be liable on all its contracts. But when all of the provisions of the Act are considered it seems plain that Congress did not contemplate turning over to the Fleet Corporation enormous sums then and thereafter appropriated in the manner in which a holder of all the stock in a corporation might contribute to the corporation's assets, but, on the contrary, that it intended that the money and the ships and the materials which the money might purchase should belong to the United States.

What Congress intended to do was to enable the Fleet Corporation to make contracts free from all the hampering conditions, delays, and "red tape" with which Congress has by various statutes safeguarded the disbursement of public funds. Congress intentionally and expressly waived all of the statutory restrictions surrounding the making of Government contracts which it had deemed necessary in times of peace, so that the President's delegated agent would have a free hand to contract for

the Government without hindrance and delay. While this provision was under discussion in the Senate, Senator Underwood, who was in charge of the bill, said that General Goethals desired "that his hands might not be tied in any way by technicalities." (Vol. 55, Part 4, p. 3549, Cong. Rec.) However, this waiver of statutory conditions intended for the protection of public funds did not make the Fleet Corporation's contracts any less Government contracts.

At that time the Fleet Corporation was not carrying on any private corporate activity or expending its funds for any private purpose. The Fleet Corporation could not lawfully engage in any private corporate enterprise and, as a matter of fact, did not attempt at any time to engage in any private corporate business. *Fleet Corp.* v. *Western Union Telegraph Co.*, 275 U. S. 415.

Section 11 of the Shipping Act, 1916, (39 St. 731), authorized the Shipping Board to form a corporation "to carry out the purposes of this Act." The purposes of the Act are all public in their nature. (See Title of Act.) The moving cause of the creation of the Fleet Corporation was to aid the Government in the purpose which Congress considered to be a public need. The public purposes the Board could carry out through the Fleet Corporation are found in Section 11, pp. 35–37, *infra*. They were the purchase, construction, equipment, lease, charter, maintenance, and operation of merchant vessels in the commerce of the United States; but the Board and

the Corporation could not operate any vessel unless no private citizen could be found to operate it, and unless the President approved operation by the Corporation. When the President did authorize operation of ships in commerce, his authorization was to the Shipping Board. (See Ex. Order, July 11, 1917, p. 41, *infra.*)

It seems clear from the foregoing that the Fleet Corporation could not lawfully have engaged in any private corporate enterprise and could not have made any private corporate contracts when the Act of June 15, 1917, was passed. The only money it possessed and the only money it could spend was the $50,000,000 transferred from the United States Treasury for its capital stock. On May 18, 1917, twenty-eight days before the first contract with Groton was executed, the Emergency Shipping Fund provisions being before the Senate, Senator Smoot said:

> Mr. President, contracts which have been made up to date by General Goethals are for 214,000 tons, and that was to be paid for out of the $50,000,000 appropriated to the Shipping Board for the purchasing of ships. Mr. Denman, the Chairman of the Board, has contracted for 72,000 tons, to be paid out of the same appropriation, making up to date, contracted for by both, 286,000 tons. General Goethals said it was impossible for him to make any further contracts until there was another appropriation made, although he has arrangements made to enter into con-

> tracts to carry out the program of the 3,000,000 tons * * *. (Vol. 55, Part 3, p. 2519, Cong. Rec.)

Moreover, the Shipping Act, 1916, provided in Section 13:

> The proceeds of such bonds and the net proceeds of all sales, charters, and leases of vessels and of sales of stock made by the board, and all other moneys received by it from any source, shall be covered into the Treasury to the credit of the board, and are hereby permanently appropriated for the purpose of carrying out the provisions of sections five and eleven.

The bonds referred to were the Panama Canal bonds; the stock referred to was the stock that might then have been sold to private parties (but none of it was so sold); the sales, charters, and leases of vessels, were those that the Board might make through the Fleet Corporation; so that all the money the Corporation might receive was definitely tagged as funds of the United States.

Under such circumstances and existing law, it seems clear that the "proviso" in the Emergency Shipping Fund provisions meant no more than a waiver of statutory restrictions surrounding the execution of Government contracts. It gave the Fleet Corporation no different status as a Government agent than it gave the Shipping Board or the Secretary of the Navy, to both of whom the President delegated some of his authority under the Act of June 15, 1917.

ARGUMENT

I

THE PERSONAL LIABILITY OF PETITIONER IN THIS CASE MUST BE DETERMINED BY THE SETTLEMENT CONTRACT OF MARCH 26, 1920, AND THE SURROUNDING FACTS AND CIRCUMSTANCES; AND IN MAKING THAT CONTRACT THE FLEET CORPORATION WAS ACTING AS AGENT OF THE UNITED STATES IN BEHALF OF THE UNITED STATES

As pointed out in the Statement, p. 2, *supra*, the contract for twelve wood hulls was executed on June 15, 1917, prior to the President's Executive Order of July 11, 1917. (R. 58.) The contract for six steel hulls was dated August 11, 1917. (R. 76.) On April 20, 1918, a contract was made for six more steel hulls. (R. 93.) On the face of the first two contracts, executed in 1917, the Fleet Corporation appears as one of the principal contracting parties, without any disclosure of a principal, but in the contract of April 20, 1918, the Fleet Corporation describes itself as "representing the United States of America," which would seem to have been sufficient notice to Groton that it was dealing with a public agent. Moreover, the original wood-hull contract was modified and changed by a "Supplementary Contract," dated September 30, 1918, (erroneously stated by the Circuit Court of Appeals as dated June 15, 1917). (R. 550.) In this "Supplementary Contract" the Fleet Corporation is described as "representing the United States of America." (R. 69.)

The Special Master, (R. 178), the District Court, (R. 504), and the Circuit Court of Appeals, (R. 552), all concurred in holding that the settlement contract of March 26, 1920, is binding as a release of all claims and obligations arising out of the earlier contracts. Consequently, it is clear that the personal liability, if any, of the Fleet Corporation must be gauged by the provisions of the contract of March 26, 1920, irrespective of any personal liability this agent may have incurred in executing the previous contracts.

The opinion of the Circuit Court of Appeals asserts that "the contracts made were similar to those in the *Astoria case,*" where "the distinction between the Fleet Corporation and the United States is marked." Even if the similarity be conceded, it should not be determinative of the issues in this case, as the Circuit Court of Appeals apparently held.

We submit that the whole frame and tenor of the contract of March 26, 1920, justifies the conclusion in regard to its effect reached by the District Court, (R. 506), rather than the conclusion reached by the Circuit Court of Appeals. (R. 549–551.) There is no evidence in the record even suggesting that Groton relied upon the faith and credit of the Fleet Corporation as principal in executing the contract, or was misled by the references to the Fleet Corporation as "Owner," mentioned below. Groton was bound to know it was contracting with a public agent. The Acts of Congress and Execu-

tive Orders alone, without more, were notice to and binding upon that contractor. *Russell Motor Car Co.* v. *United States,* 261 U. S. 514, 523. But, in addition, the contract itself is explicit in stating that the Fleet Corporation was "representing and acting in respect to all matters hereinafter contained for and on behalf of the United States of America," (R. 118), and that the "Owner" is a "Governmental agency," (R. 125, bottom of page); and in the "Release," (Art. XII, R. 131), the Fleet Corporation is released "both in its corporate capacity and as representing the United States of America."

Moreover, some of the promises in the body of the contract, made by the "party of the second part," relate to matters entirely outside of the domain of the business the Fleet Corporation was authorized to transact under its charter powers and its functions as an agent of the Shipping Board under the Shipping Act, 1920. Thus, paragraph (e) of Article II (R. 122) allows the contractor $500,000 in settlement and adjustment of "all obligations of the *Owner* to the Contractor or to the Receivers, arising out of the suspension and cancellation of the three hulls, 10 to 12 inclusive, under Contract 225 S. C." Manifestly, the word "Owner," as here employed, must mean the United States, because under the Act of June 15, 1917, it is the United States that must pay just compensation upon cancellation of a contract pursuant to that Act. Article III (R. 124) deals entirely with

matters foreign to any lawful powers the Fleet Corporation could exercise in its private corporate capacity. The article provides for cancellation of three steel vessels and three wooden hulls, and awards just compensation to Groton Iron Works on account of the cancellations. A part of this just compensation is to be paid in kind—that is, by turning over to the Contractor a completed wooden ship, a wooden hull, and also certain materials "*furnished by the Owner.*" The "Owner" of the completed ship was the United States, because the Executive Order of July 11, 1917, so provides. It is the Shipping Board, and not the Fleet Corporation, that is therein directed to take title to, and operate, manage, and *dispose of* all constructed ships acquired under authority of the Act of June 15, 1917. (See p. 41, *infra.*) The "Owner" of the wooden hull and of the materials was also the United States, because Congress had so declared in the Sundry Civil Act, approved July 19, 1919, (c. 24, 41 Stat. 163, 181), which provided:

> Any material or plant, as defined under the emergency shipping fund provision of the Deficiency Appropriation Act approved June 15, 1917, acquired by the United States Shipping Board Emergency Fleet Corporation, may be disposed of as the President may direct.

By Executive Order dated August 11, 1919, the President delegated his power to dispose of these surplus materials to the United States Shipping Board and authorized that Board to sell or dispose

of such materials through the agency of the Fleet Corporation.

Throughout the contract there are frequent references to "the Owner" so phrased as to imply that the Fleet Corporation regarded and referred to itself as "the Owner." This confusion of identity and ownership can only be explained when it is remembered that up to the decision of this Court in the *Sloan-Astoria-Eastern Shore cases, (supra)*, the officials and attorneys of the Fleet Corporation asserted and consistently maintained that the Fleet Corporation was an integral arm and branch of the Government, similar to the Navy Department or any other executive department or bureau. However, we do not regard this mistaken impression as to its legal status, as exhibited by its references in this contract to itself as "Owner," to be determinative of its status under the contract.

Whether or not the Fleet Corporation was contracting as a principal and pledging its own personal credit is a question of law on all the facts. Certainly it is an established fact that the Fleet Corporation had complete and full authority as agent to execute this contract and to make the promises therein upon behalf of the United States. On the other hand, it did not have power to cancel contracts and award just compensation for such cancellations in its private corporate capacity. Nor did it have power to dispose of the ships and materials acquired by the President, except as an agent of the President or the Shipping Board. It

will not be presumed that it contracted in an unlawful manner and capacity, when it could lawfully contract in some other capacity.

II

A GOVERNMENTAL AGENCY IS NOT LIABLE ON A CONTRACT MADE BY IT IN BEHALF OF THE UNITED STATES

As the District Court found that the Fleet Corporation sustained the burden of showing that it made the contract in question solely as a governmental agency in behalf of the United States, it would seem that the decree of the District Court dismissing the suit should have been affirmed, on the application of this principle of law. *Hodgson* v. *Dexter*, 1 Cranch 345; *Parks* v. *Ross*, 11 How, 362, 374; *Sheets* v. *Selden's Lessee*, 2 Wall. 177, 187; *Belknap* v. *Schild*, 161 U. S. 10, 17.

We believe that there would have been an affirmance had it not been for the interpretation placed by the Circuit Court of Appeals on the decision of this Court in *Sloan-Astoria cases*, 258 U. S. 549. Apparently that court was of the opinion that there this Court held that the Fleet Corporation was not only *suable* but was also *liable* as principal even on contracts executed by it in behalf of the Government under its authority delegated to it.

If this interpretation is correct, then the Fleet Corporation as a governmental agent would seem to be *sui generis*—the only one of its kind—and different from all other kinds of agents the courts have had to deal with in the past.

We can not concede that the *Sloan-Astoria* decision should be so construed. It appears that the

only issue raised by the record in those two cases was whether the respective District Courts did or did not have jurisdiction, because of the immunity from suit claimed by the Fleet Corporation. In discussing the *Sloan case,* which was an action sounding in tort, the majority opinion points out that the Fleet Corporation, *by reason of its incorporation,* possessed an identity apart from that of the United States; that any person within the jurisdiction always is amenable to the law; and even though such person, either natural or artificial, is an instrumentality or agent of the Government for the highest ends, he does not cease to be answerable for his acts, merely because he is such agent. Hence the District Court had *jurisdiction* of the *Sloan* suit.

The same reasoning was applied to the *Astoria* suit, which was an action ex contractu. In discussing the provisions of the *Astoria* contract, Mr. Justice Holmes said, (p. 569): "The whole frame of the instrument seems to us plainly to recognize the Corporation as the immediate party to the contract." In employing this language we understand the Court intended to make clear the difference in identity between the agent that actually executed the contract and the United States, for the Fleet Corporation was then contending in effect that its identity had been merged in that of the Government of the United States and that it possessed the sovereign's immunity from suit. We do not understand this reference to the Fleet Corporation

as "the immediate party to the contract" as a holding that the Fleet Corporation was therefore *liable* as a principal, regardless of what the proof might show.

Our interpretation seems to be borne out by the next two sentences:

> The distinction between it and the United States is marked in the phrase last quoted. If we are right in this, further reasoning seems to us unnecessary to show that *there was jurisdiction of the suit.* (Italics ours.)

From the dissenting opinion filed by the Chief Justice, it appears that the minority of the Court placed the same interpretation on the decision as the one we are now suggesting. The Chief Justice said (p. 572):

> The opinion of the court is carefully drawn and if its conclusion is to rest merely on the nice distinction that it does not clearly appear from a proper construction of the pleadings that the acts here complained of were acts done under authority delegated by the President to the Fleet Corporation, as his agent, then the question I have been discussing and which seems to me to be in these cases is not here decided, and will only arise on answer and evidence.

Our understanding of the effect of the decision in the *Sloan-Astoria cases* is shared not only by the District Judge Thomas in the court below in the instant case (R. 510) but also by two other Federal courts in recent opinions.

In *Astoria Marine Iron Works* v. *Fleet Corporation*, 295 Fed. 415, where the same plaintiff was suing on a Fleet Corporation contract similar to the one that was before this Court, the Fleet Corporation filed an answer denying liability to plaintiff on the same grounds that are being asserted in this case in the Fourth Separate Defense. (R. 148.) Plaintiff demurred and moved to strike the answer. In overruling the demurrer and motion, District Judge Bean said (p. 418):

> Great reliance is placed by plaintiff on the decisions in the *Sloan Shipyards, supra,* and kindred cases; but as I read the opinions in these cases the question here presented, although urged upon the attention of the court, was deemed not to be within the record, and is not decided. Two of the cases were appeals from judgments sustaining demurrers to the complaints and dismissing the actions, on the ground that the Fleet Corporation was a mere bureau or arm of the Government and entitled to the immunity of the sovereign. The court ruled that it was a public business corporation, and liable to be sued for its torts or on its contracts the same as any other corporation, and therefore the complaints stated a cause of action; but the question of whether it is personally liable on contracts made by it as agent or representative of the President under the war powers conferred upon him was not decided.

In *Fleet Corp.* v. *Galveston Drydock & Const. Co.*, 13 F. (2d) 607 (certiorari denied, 273 U. S.

725), a judgment had been entered against the Fleet Corporation for certain repair work on a Shipping Board vessel on written orders given by the Fleet Corporation. On writ of error the Circuit Court of Appeals for the Fifth Circuit reversed and remanded. The court said (pp. 611, 612):

> We are of opinion that the language of the written instruments evidencing the contracts sued on, when that language is considered in the light of statutory provisions determining by whom the work and labor called for by those contracts may be authorized to be done, and in the light of the facts that the Fleet Corporation, acting in its own behalf as principal, was without authority to have that work done, but could legally act for the Shipping Board in having it done, requires the conclusion that the Fleet Corporation in making those contracts acted as the agent of the Shipping Board, and did not thereby obligate itself to pay for the material and labor called for by those contracts. Under the laws which were in force when those contracts were made, the Fleet Corporation could act in two entirely different capacities, as a private corporation carrying on business in its own name as a principal, and as the agent of the Shipping Board, an administrative branch of the Government. It has been settled that the Fleet Corporation is subject to suit and judgment against it on a contract made in its own name as principal in the conduct of a business in which it is authorized to engage. *Sloan Shipyards* v. *U. S. Fleet*

Corp., 258 U. S. 549; 42 S. Ct. 386; 66 L. Ed. 762.

It is equally well settled that an agent of the Government or of a branch thereof is not personally liable on a contract made on behalf of his principal while acting within the scope of his authority.

We submit that if the President himself had exercised the powers conferred upon him and had made the contract in question, he could not have been held personally liable, and that the Fleet Corporation, exercising in behalf of the Government the powers delegated by the President, should not be held personally liable.

CONCLUSION

We submit that, in view of the general importance of the question decided and the conflict in decisions of the Federal courts since the *Sloan-Astoria* decision by this Court, the writ of certiorari should be granted.

Respectfully submitted.

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Solicitor General.

CLAUDE R. BRANCH,
Special Assistant to the Attorney General.

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O. P. M. BROWN,
Special Counsel, Fleet Corporation,
Of Counsel.

AUGUST, 1929.

APPENDIX

Shipping Act of 1916, c. 451, 39 Stat. 728, 730–732

SEC. 5. That the board, with the approval of the President, is authorized to have constructed and equipped in American shipyards and navy yards or elsewhere, giving preference, other things being equal, to domestic yards, or to purchase, lease, or charter, vessels suitable, as far as the commercial requirements of the marine trade of the United States may permit, for use as naval auxiliaries or Army transports, or for other naval or military purposes, and to make necessary repairs on and alterations of such vessels: *Provided,* That neither the board nor any corporation formed under section eleven in which the United States is then a stockholder shall purchase, lease, or charter any vessel—

(a) Which is then engaged in the foreign or domestic commerce of the United States, unless it is about to be withdrawn from such commerce without any intention on the part of the owner to return it thereto within a reasonable time;

(b) Which is under the registry or flag of a foreign country which is then engaged in war;

(c) Which is not adapted, or can not by reasonable alterations and repairs be adapted, to the purposes specified in this section;

(d) Which, upon expert examination made under the direction of the board, a written report

of such examination being filed as a public record, is not without alteration or repair found to be at least seventy-five per centum as efficient as at the time it was originally put in commission as a seaworthy vessel.

* * * * *

SEC. 7. That the board, upon terms and conditions prescribed by it and approved by the President, may charter, lease, or sell to any person, a citizen of the United States, any vessel so purchased, constructed, or transferred.

* * * * *

SEC. 11. That the board, if in its judgment such action is necessary to carry out the purposes of this Act, may form under the laws of the District of Columbia one or more corporations for the purchase, construction, equipment, lease, charter, maintenance, and operation of merchant vessels in the commerce of the United States. The total capital stock thereof shall not exceed $50,000,000. The board may, for and on behalf of the United States, subscribe to, purchase, and vote not less than a majority of the capital stock of any such corporation, and do all other things in regard thereto necessary to protect the interests of the United States and to carry out the purposes of this Act. The board, with the approval of the President, may sell any or all of the stock of the United States in such corporation, but at no time shall it be a minority stockholder therein: *Provided,* That no corporation in which the United States is a stockholder, formed under the authority of this section, shall engage in the operation of any vessel constructed, purchased, leased, chartered, or transferred under the authority of this Act unless the board shall be

unable, after a bona fide effort, to contract with any person a citizen of the United States for the purchase, lease, or charter of such vessel under such terms and conditions as may be prescribed by the board.

The board shall give public notice of the fact that vessels are offered and the terms and conditions upon which a contract will be made, and shall invite competitive offerings. In the event the board shall, after full compliance with the terms of this proviso, determine that it is unable to enter into a contract with such private parties for the purchase, lease, or charter of such vessel, it shall make a full report to the President, who shall examine such report, and if he shall approve the same he shall make an order declaring that the conditions have been found to exist which justify the operation of such vessel by a corporation formed under the provisions of this section.

At the expiration of five years from the conclusion of the present European war the operation of vessels on the part of any such corporation in which the United States is then a stockholder shall cease and the said corporation stand dissolved. The date of the conclusion of the war shall be declared by proclamation of the President. The vessels and other property of any such corporation shall revert to the board. The board may sell, lease, or charter such vessels as provided in section seven and shall dispose of the property other than vessels on the best available terms and, after payment of all debts and obligations, deposit the proceeds thereof in the Treasury to its credit. All stock in such corpora-

tions owned by others than the United States at the time of dissolution shall be taken over by the board at a fair and reasonable value and paid for with funds to the credit of the board. In case of disagreement, such value shall be determined in the manner provided in section ten.

* * * * *

SEC. 13. That for the purpose of carrying out the provisions of sections five and eleven no liability shall be incurred exceeding a total of $50,000,000, and the Secretary of the Treasury, upon the request of the board, approved by the President, shall from time to time issue and sell or use any of the bonds of the United States now available in the Treasury under the Acts of August fifth, nineteen hundred and nine, February fourth, nineteen hundred and ten, and March second, nineteen hundred and eleven, relating to the issue of bonds for the construction of the Panama Canal, to a total amount not to exceed $50,000,000: *Provided*, That any bonds issued and sold or used under the provisions of this section may be made payable at such time within fifty years after issue as the Secretary of the Treasury may fix, instead of fifty years after the date of issue, as prescribed in the Act of August fifth, nineteen hundred and nine.

The proceeds of such bonds and the net proceeds of all sales, charters, and leases of vessels and of sales of stock made by the board, and all other moneys received by it from any source, shall be covered into the Treasury to the credit of the board, and are hereby permanently appropriated for the purpose of carrying out the provisions of sections five and eleven.

Urgent Deficiency Act of June 15, 1917, c. 29, 40 Stat. 182–183, 217

Emergency Shipping Fund

The President is hereby authorized and empowered, within the limits of the amounts herein authorized—

(a) To place an order with any person for such ships or material as the necessities of the Government, to be determined by the President, may require during the period of the war and which are of the nature, kind, and quantity usually produced or capable of being produced by such person.

(b) To modify, suspend, cancel, or requisition any existing or future contract for the building, production, or purchase of ships or material.

(c) To require the owner or occupier of any plant in which ships or materials are built or produced to place at the disposal of the United States the whole or any part of the output of such plant, to deliver such output or part thereof in such quantities and at such times as may be specified in the order.

(d) To requisition and take over for use or operation by the United States any plant, or any part thereof without taking possession of the entire plant, whether the United States has or has not any contract or agreement with the owner or occupier of such plant.

(e) To purchase, requisition, or take over the title to, or the possession of, for use or operation by the United States, any ship now constructed or in the process of construction or hereafter constructed, or any part thereof, or charter of such ship.

Compliance with all orders issued hereunder shall be obligatory on any person to whom such order is given, and such order shall take precedence over

all other orders and contracts placed with such person. If any person owning any ship, charter, or material, or owning, leasing, or operating any plant equipped for the building or production of ships or material shall refuse or fail to comply therewith or to give to the United States such preference in the execution of such order, or shall refuse to build, supply, furnish, or manufacture the kind, quantities, or qualities of the ships or material so ordered, at such reasonable price as shall be determined by the President, the President may take immediate possession of any ship, charter, material, or plant of such person, or any part thereof without taking possession of the entire plant, and may use the same at such times and in such manner as he may consider necessary or expedient.

Whenever the United States shall cancel, modify, suspend or requisition any contract, make use of, assume, occupy, requisition, acquire, or take over any plant or part thereof, or any ship, charter, or material, in accordance with the provisions hereof, it shall make just compensation therefor, to be determined by the President; and if the amount thereof, so determined by the President, is unsatisfactory to the person entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined by the President and shall be entitled to sue the United States to recover such further sum as, added to said seventy-five per centum, will make up such amount as will be just compensation therefor, in the manner provided for by section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code.

The President may exercise the power and authority hereby vested in him, and expend the money

herein and hereafter appropriated through such agency or agencies as he shall determine from time to time: *Provided*, That all money turned over to the United States Shipping Board Emergency Fleet Corporation may be expended as other moneys of said corporation are now expended. All ships constructed, purchased, or requisitioned under authority herein, or heretofore or hereafter acquired by the United States, shall be managed, operated, and disposed of as the President may direct.

* * * * *

SEC. 3. That the appropriations contained herein shall be available for the payment of obligations on account of the existing emergency incurred prior to the passage of this act and which are properly chargeable to such appropriations.

Executive Order, July 11, 1917

Delegating to the Shipping Board and the Emergency Fleet Corporation the powers granted the President by the emergency shipping legislation.

By virtue of authority vested in me in the section entitled "Emergency shipping fund" of an act of Congress entitled "An act making appropriations to supply urgent deficiencies in appropriations for the Military and Naval Establishments on account of war expenses for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes," approved June 15, 1917, I hereby direct that the United States Shipping Board Emergency Fleet Corporation shall have and exercise all power and authority vested in me in said section of said act, in so far as applicable to and in furtherance of the construction of vessels, the purchase or requisitioning of vessels in process of construction,

whether on the ways or already launched, or of contracts for the construction of such vessels, and the completion thereof, and all power and authority applicable to and in furtherance of the production, purchase, and requisitioning of materials for ship construction.

And I do further direct that the United States Shipping Board shall have and exercise all power and authority vested in me in said section of said act, in so far as applicable to and in furtherance of the taking over of title or possession, by purchase or requisition, of constructed vessels, or parts thereof, or charters therein; and the operation, management, and disposition of such vessels, and of all other vessels heretofore or hereafter acquired by the United States. The powers herein delegated to the United States Shipping Board may, in the discretion of said board, be exercised directly by the said board or by it through the United States Shipping Board Emergency Fleet Corporation, or through any other corporation organized by it for such purpose.

WOODROW WILSON.

THE WHITE HOUSE, *July 11, 1917.*

Executive Order, December 3, 1918

Delegating to the United States Shipping Board and to the United States Shipping Board Emergency Fleet Corporation, respectively, powers granted to the President by Acts of Congress relative to the emergency shipping fund and approved on or prior to November 4, 1918.

Whereas by Executive order, No. 2664, dated July 11, 1917, I delegated to the United States Shipping Board and to the United States Shipping

Board Emergency Fleet Corporation, respectively, certain powers vested in me under the section entitled "Emergency shipping fund" of the urgent deficiency appropriation act approved June 15, 1917; and

Whereas since the issuance of said Executive order the said powers granted in said act have been variously affected or extended by the section entitled "Emergency shipping fund" of the urgent deficiency appropriation act approved October 6, 1917, by public act No. 138, 65th Congress, approved April 22, 1918, amending said section of said act of June 15, 1917, and by the sections entitled "Emergency shipping fund" in the sundry civil appropriation act approved July 1, 1918, and in the first deficiency appropriation act, 1919, approved November 4, 1918, respectively:

Now, therefore, by virtue of the authority vested in me by said laws, supplementing said order No. 2664, but in no way limiting or restricting the effect thereof, or of acts heretofore done in pursuance thereof, I do hereby delegate all the power and authority so vested in me, and do direct that—

1. The United States Shipping Board Emergency Fleet Corporation shall have and exercise all power and authority now vested in me by said laws with reference to any and all activities which may be directly or indirectly applicable to ship or plant construction; and

2. The United States Shipping Board shall have and exercise, subject to its discretion in turn to delegate such exercise as provided in said Executive Order No. 2664, all power and authority now vested in me by said laws with reference to constructed dry docks, marine railways and piers, and to con-

structed vessels or parts thereof or charters therein; to the operation, management, and disposition of such dry docks, marine railways, piers, and vessels; and to such other matters as are not herein mentioned.

3. All acts heretofore done by said corporation or by said board, with reference, respectively, to the kinds of power or authority herein delegated to each, and which could have been properly done by me under such statutes or any of them, be, and they are hereby, ratified and confirmed.

WOODROW WILSON.

THE WHITE HOUSE, *December 3, 1918.*

Merchant Marine Act of 1920, c. 250, 41 Stat. 988, 990, 993

SEC. 2. (a) That the following Acts and parts of Acts are hereby repealed, subject to the limitations and exceptions hereinafter, in this Act, provided:

(1) The emergency shipping fund provisions of the Act entitled "An Act making appropriations to supply urgent deficiencies in appropriations for the Military and Naval Establishments on account of war expenses for the fiscal year ending June 30, 1917, and for other purposes," approved June 15, 1917, as amended by the Act entitled "An Act to amend the emergency shipping fund provisions of the Urgent Deficiency Appropriation Act, approved June 15, 1917, so as to empower the President, and his designated agents to take over certain transportation systems for the transportation of shipyard and plant employees, and for other purposes," approved April 22, 1918, and as further amended by the Act entitled "An Act making appropriation to supply deficiencies in appropriations for the fiscal year ending June 30, 1919, and prior fiscal years, on

account of war expenses, and for other purposes," approved November 4, 1918;

(2) Section 3 of such Act of April 22, 1918;

(3) The paragraphs numbered 2 and 3 under the heading "Emergency shipping fund" in such act of November 4, 1918; and

(4) The Act entitled "An Act to confer on the President power to prescribe charter rates and freight rates and to requisition vessels, and for other purposes," approved July 18, 1918.

(5) Sections 5, 7, and 8, Shipping Act, 1916.

(b) The repeal of such Acts or parts of Acts is subject to the following limitations:

(1) All contracts or agreements lawfully entered into before the passage of this Act under any such Act or part of Act shall be assumed and carried out by the United States Shipping Board, hereinafter called "the board."

(2) All rights, interests, or remedies accruing or to accrue as a result of any such contract or agreement or of any action taken in pursuance of any such Act or parts of Acts shall be in all respects as valid, and may be exercised and enforced in like manner, subject to the provisions of subdivision (c) of this section, as if this Act had not been passed.

(3) The repeal shall not have the effect of extinguishing any penalty incurred under such Acts or parts of Acts, but such Acts or parts of Acts shall remain in force for the purpose of sustaining a prosecution for enforcement of the penalty therein provided for the violation thereof.

(4) The board shall have full power and authority to complete or conclude any construction work begun in accordance with the provisions of

such Acts or parts of Acts if, in the opinion of the board, the completion or conclusion thereof is for the best interests of the United States.

(e) As soon as practicable after the passage of this Act the board shall adjust, settle, and liquidate all matters arising out of or incident to the exercise by or through the President of any of the powers or duties conferred or imposed upon the President by any such Act or parts of Acts; and for this purpose the board, instead of the President, shall have and exercise any of such powers and duties relating to the determination and payment of just compensation: *Provided*, That any person dissatisfied with any decision of the board shall have the same right to sue the United States as he would have had if the decision had been made by the President of the United States under the Acts hereby repealed.

* * * * *

SEC. 4. That all vessels and other property or interests of whatsoever kind, including vessels or property in course of construction or contracted for, acquired by the President through any agencies whatsoever in pursuance of authority conferred by the Acts or parts of Acts repealed by section 2 of this Act, or in pursuance of the joint resolution entitled "Joint resolution authorizing the President to take over for the United States the possession and title of any vessel within its jurisdiction, which at the time of coming therein was owned in whole or in part by any corporation, citizen, or subject of any nation with which the United States may be at war, or was under register of any such nation, and for other purposes," approved May 12, 1917, with the exception of vessels

and property, the use of which is, in the opinion of the President, required by any other branch of the Government service of the United States, are hereby transferred to the board: *Provided*, That all vessels in the military and naval service of the United States, including the vessels assigned to river and harbor work, inland waterways, or vessels for such needs in the course of construction or under contract by the War Department, shall be exempt from the provisions of this Act.

* * * * * *

SEC. 12. That all vessels may be reconditioned and kept in suitable repair, and until sold shall be managed and operated by the board or chartered or leased by it on such terms and conditions as the board shall deem wise for the promotion and maintenance of an efficient merchant marine, pursuant to the policy and purposes declared in sections 1 and 5 of this Act; and the United States Shipping Board Emergency Fleet Corporation shall continue in existence and have authority to operate vessels, unless otherwise directed by law, until all vessels are sold in accordance with the provisions of this Act, the provision in section 11 of the "Shipping Act, 1916," to the contrary notwithstanding.

U.S. GOVERNMENT PRINTING OFFICE